

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**November 8, 2004**

**IN RE:**

**PETITION OF BELL SOUTH LONG DISTANCE, INC.  
TO PROVIDE COMPETING LOCAL  
TELECOMMUNICATIONS SERVICES**

**DOCKET NO.  
03-00602**

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**ORDER GRANTING WITHDRAWAL OF PETITIONS TO INTERVENE FILED BY  
AT&T OF THE SOUTH CENTRAL STATES, INC. AND TIME WARNER TELECOM  
OF THE MID-SOUTH, LLC AND ESTABLISHING HEARING DATE**

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This matter is before the Hearing Officer for the purpose of hearing preliminary matters prior to Hearing and establishing a procedural schedule to completion in this docket for consideration of the petition for a certificate of public convenience and necessity ("CCN") filed by BellSouth Long Distance, Inc. ("BSLD"). After participating for several months as Intervenors in this docket, AT&T Communications of the South Central States, LLC ("AT&T") and Time Warner Telecom of the Mid-South, LLC ("Time Warner") determined not to continue their participation and filed motions to withdraw their interventions on October 6, 2004 and October 8, 2004, respectively. There no longer being any interventions in this docket, the Hearing Officer determined that the matter could proceed to Hearing before the panel on November 8, 2004.

## **Background**

The *Petition of BellSouth Long Distance, Inc. to Provide Competing Local Telecommunications Services* (“Application”) was filed with the Tennessee Regulatory Authority (“Authority” or “TRA”) on November 13, 2003. On December 30, 2003, AT&T filed a Petition to Intervene in this matter. Chairman Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle, the panel assigned to this docket, initially considered AT&T’s Petition at the January 26, 2004 Authority Conference, at which time AT&T was directed to provide a written statement more fully explaining the basis for its intervention request. AT&T filed its statement in the form of a Response on January 27, 2004, stating that it has an interest in insuring that, if BSLD’s Application is granted, the TRA will impose appropriate safeguards to deter BSLD and BellSouth Telecommunications, Inc. from engaging in anti-competitive practices.<sup>1</sup> On February 6, 2004, BSLD filed a Reply to AT&T’s Response, requesting that AT&T’s Petition to Intervene be denied. During a February 9, 2004 Authority Conference, the panel again considered AT&T’s Petition, granted intervention to AT&T and appointed the Authority’s General Counsel or his designee to act as the Hearing Officer in this proceeding to hear preliminary matters prior to the Hearing, to rule on any petition(s) for intervention and to set a procedural schedule to completion. At the February 9, 2004 Conference, Time Warner expressed an interest in intervening and on April 2, 2004 filed the *Petition of Time Warner Telecom of the Mid South, LLC to Intervene* stating that as a competitor, Time Warner’s legal rights, duties, privileges, immunities or other legal interest or responsibilities may be affected or determined by the outcome of the proceedings.<sup>2</sup>

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<sup>1</sup> *Response of AT&T to Objection of BellSouth Long Distance*, p. 3 (January 27, 2004).

<sup>2</sup> *Petition of Time Warner Telecom of the Mid-South, LLC to Intervene*, p. 1 (April 2, 2004)

By agreement of the parties, a telephonic status conference was held on April 2, 2004 for the purpose of establishing a procedural schedule and a hearing date. Time Warner's Petition to Intervene was granted without opposition from BSLD or AT&T. The parties then discussed the necessity of establishing safeguards in the consideration of BSLD's Application. Because of multiple scheduling conflicts and the intent to engage in discussions regarding the establishment of safeguards, the parties requested a postponement of a procedural schedule for several weeks. The parties stated that, during this postponement, they would pursue the possibility of entering into an agreement regarding the necessity for safeguards. The parties were contacted in July regarding setting a schedule for filing testimony, and again the parties stated that negotiations regarding the safeguards issue were ongoing.

#### **Withdrawal of Petitions for Intervention**

During the month of September, 2004, the Hearing Officer contacted the parties and was informed that the parties had narrowed their differences to the single issue of whether BSLD must comply with the price floor established for its affiliate BellSouth Telecommunications, Inc. under Tenn. Code Ann. § 65-5-208(c). The parties proposed to file briefs and hold oral argument on that one issue. While the Intervenors did not otherwise contest BSLD's application, Tenn. Code Ann. § 65-4-201(c) requires a hearing on a CCN application. A telephonic status conference was conducted September 28, 2004 by the Hearing Officer, at which time the parties agreed to a procedural schedule to completion. A number of stipulations were discussed during the status conference that would put this case in a posture in which the single issue could be argued and a hearing could be conducted thereafter on the criteria required to grant a CCN. Nevertheless, instead of executing a proposed stipulation, the Intervenors announced that they would be withdrawing their interventions. On October 6, 2004 AT&T filed a Motion to

withdraw its Petition to Intervene and on October 8, 2004, Time Warner filed a Motion to withdraw its Petition to Intervene.

Upon ascertaining that BSLD's Application was complete, the Hearing Officer, on October 29, 2004, issued a Notice of Hearing setting this matter for hearing before the panel on **November 8, 2004.**

**IT IS THEREFORE ORDERED THAT:**

1. The Motions of AT&T and Time Warner to withdraw their Petitions to Intervene are granted; and
2. No further preliminary action being required, the Application of Bell South Long Distance, Inc. is ready to be heard on the merits by the panel assigned to this docket.

  
J. Richard Collier, Hearing Officer